

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Appeal 394 of 2006

HON. ONESMUS K. MWANGI APPELLANT/APPLICANT

VERSUS

ALICE WANGARI MAINA RESPONDENT

INVESCO ASSURANCE CO. LTD.....PROPOSED THIRD PARTY

RULING

This is a rather unusual application. On 3rd August, 2006 the Appellant here obtained leave of the Court (Hon. Aluoch, J) to issue a 3rd Party Notice to Invesco Assurance Company Limited (“the third party”), and is now before this Court to seek orders that are fairly substantial, and orders that cannot possibly be given without giving the third party an opportunity to defend itself. Clearly, at this Appeal stage, this is **not** the forum to ventilate a claim, and present a defence, in respect of the orders sought.

The orders sought against the third party are as follows:

“1. THAT Appellant/Applicant (the Defendant in RMCC Milimani No. 12474/04) is entitled to be fully indemnified from all judgments, orders, claims, relief, remedies and expenses, costs arising, obtained or to be obtained in RMCC Milimani RMCC No.12474/04 and this Appeal

2. THAT the Honourable Court do grant an order passing on to the Third Party liability for all judgments, orders, claims, relief, remedies and expenses, costs arising, obtained or that may be obtained by the Respondent (Plaintiff in RMCC No. 12474/94) against the Appellant/Applicant and or connected howsoever to the subject matter of this suit

3. THAT Kshs.2.2 million (Kenya Shillings Two Million Two Hundred Thousand) deposited by the Appellant/Applicant in court on 3rd August 2006 vide Deposit Receipt No. B403168 to be released to the Appellant/Applicant forthwith.”

Of course, it is not possible for this Court to declare or order that the third party is liable to the Appellant, based on the affidavit evidence provided by the Applicant. The third party has a right to defend itself, and present its case, through evidence, as to why it is not liable. That can only be done at trial, not in this Appeal. The third party was not even a party to the suit in the Lower Court.

This application is highly misplaced, and I dismiss the same with costs to the Respondent and the third party.

Dated and delivered at Nairobi this 13th day of February, 2007.

ALNASHIR VISRAM

JUDGE